



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/887,939	06/22/2001	Christopher J. Marxen	2001P11061US	7697
7590	03/24/2006		EXAMINER	NI, SUHAN
JOEL MILLER, ESQ. 17 WESTWOOD DRIVE SOUTH WEST ORANGE, NJ 07502			ART UNIT	PAPER NUMBER

2615

DATE MAILED: 03/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)
	09/887,939	MARXEN ET AL.
Examiner	Art Unit	
Suhan Ni	2646	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 February 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- The period for reply expires 3 months from the mailing date of the final rejection.
- The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

- They raise new issues that would require further consideration and/or search (see NOTE below);
- They raise the issue of new matter (see NOTE below);
- They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. Applicant's reply has overcome the following rejection(s): _____.

6. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached page.

12. Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). filed 2/27/06 by app

13. Other: _____.

Suhan Ni
Primary Examiner
Art Unit: 2646



Advisory Action

1. This communication is responsive to the after-final communication dated 02/27/2006.

Response

2. The request for reconsideration and the remarks made by the applicants have been fully considered, but it does not to be persuasive for placing the application in the condition for allowance.

The cited reference (U. S. Pat. - 6,595,317) does clearly show an apparatus and methods for fabricating the shell for an in-the-ear hearing instrument comprising at least one component or structural feature (Fig. 3), comprising: a scanner (A) for obtaining a digital representation (13) of a portion of the ear canal (12) and optionally a portion of the outer ear (11), and a processor (B-C) for creating a digital representation (16) of the shell that conforms to the scanned digital representation (13) of the ear canal and the outer ear as applicable, wherein the processor comprises: means (B) for creating a digital representation (14) of the shell; and means (C) for adjusting the fit of the digital representation of the outer surface of the shell in the digital representation of the ear canal (col. 7, lines 43-46 and 58-63) as claimed.

Furthermore, regarding the argument made by the applicants under lines 8-14 of page 9, the applicants assert that the cited prior art fails to teach the claimed limitation of “adjusting the fit of the digital representation of the outer surface of the shell in the digital representation of the ear canal”. The examiner respectfully disagrees with the applicant. The prior art clearly teaches, “**The surface of the shell model may be smoothed to eliminate sharp edges and corners and to obtain a smooth surface.** The entire shell may be smoothed or specific areas of the shell may be

selected, e.g. using a computer mouse with a cursor, for smoothing by well known CAD/CAM **smoothing techniques**" (col. 7, lines 58-63) as exactly claimed by the applicants in at least all the independent claims.

The prior art of U.S. Patent made of record and not relied upon is considered pertinent to applicant's disclosure.



SUHAN NI
PRIMARY EXAMINER